IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION No. 32491 of 1998

Between:

Rajendra Prasad Goel, S/o Ramchander Goel,
Plot No 3, P.G.Reddy Colony, Bapu Bagh Colony,
Secunderabad.

...PETITIONER

AND

1 Municipal Corporation of Hyderabad, rep.by its

Commissioner, Tankbund Road, Hyderabad.
2 R.Vasudev Pillai, s/o Late R.Venu Gopal Pillai
Senior Advocate, R/o Road No 6,

Banjara Hills, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction in the nature of mandamus or otherwise, declaring the impugned proceedings dated 16/20.10.98 of the first respondent as illegal, arbitrary and ultravires the power of the first respondent under the H.M.C Act and consequently direct the first respondent to consider the petitioners building application dated 26.5.98 in accordance with building Bye-Law and pass necessary orders within a fixed time frame.

Counsel for the Petitioner : MR.M.V.S.SURESH KUMAR

Counsel for the Respondent No.1 : MR.RAMA RAO GANTA, SC

Counsel for the Respondent No.2 : Mr. D.Parthasarathy

The Court made the following :

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.32491 OF 1998

ORDER : (Per Hon'ble Sri Justice S.Ananda Reddy)

This writ petition is filed by the petitioner praying for issue of a writ of mandamus declaring the proceedings of the first respondent-Municipal Corporation of Hyderabad
dated 16/20-10-1998 as illegal, arbitrary and ultravires of its powers under the Hyderabad Municipal Corporation Act and consequently direct the first respondent to consider the petitioner's building application 26-5-1998 in accordance with the Building By-laws and pass necessary orders within a fixed time frame.

This writ petition is an off-shoot of the dispute between the same parties, who are the parties in W.P.No.35082 of 1998 as well as in CCCA.Nos.79 and 192 of 2004. Admittedly, the petitioner entered into a contract with the second respondent as per which the petitioner is to put up a multi-storied commercial-cum-residential complex after obtaining necessary permissions from the first respondent-Corporation. As the land in question was reserved for public and semi-public purposes as per the Master

Plan, the petitioner approached the Government for seeking necessary orders for change of the land user and finally orders were obtained vide G.O.Ms.No.120, M.A., dated 1-4-1998 changing the land user. The petitioner thereafter submitted necessary building plans for approval and in fact, even the committee constituted for consideration of such applications took a decision to recommend to the Commissioner for approval of the said plan. At that stage, the second respondent cancelled the contract by executing a unilateral document and also communicated the act of cancellation to the Municipal Corporation of Hyderabad as well as to the various other authorities seeking not to approve the building plan submitted by the petitioner. As a result of the said cancellation of the contract, the first respondent-Municipal Corporation issued the impugned proceedings
dated 16/20-10-1998 refusing the proposals and returning the same unapproved. The said proceedings are assailed in the present writ petition. Subsequent to the filing of the present writ petition, the petitioner also filed a Civil Suit being O.S.No.130 of 2001 on the file of the XIV Additional Chief Judge, City Civil Court (Fast Track), Hyderabad, seeking declaration that the cancellation made by the second respondent as *non-est* apart from specific performance of the contract. The Court decreed the suit granting both the reliefs. Though the petitioner filed an appeal against the said judgment and decree as he is aggrieved against the imposition of a condition as to the payment of damages, but insofar as setting aside the cancellation of the contract is concerned, it has become final, as the said finding is not assailed. Though, in fact, an appeal was filed by the second respondent being CCCA. No.192 of 2004, but the said appeal is confined only with reference to the finding recorded by the Civil Court in respect of the issue No.5 i.e., the finding recorded by the Civil Court that the writ petitioner, who is the plaintiff in the suit, is not a land grabber.

In view of the setting aside the cancellation deed executed by the second respondent, the Development-cum-Sale Agreement-cum-Irrevocable Power of

Attorney stands valid and the petitioner is entitled not only to obtain necessary approvals from the first respondent, but also to proceed with the construction of the building as per the terms of the contract entered between the parties.

Under the above circumstances, the writ petition is allowed setting aside the impugned order, with a further direction to the first respondent-Corporation to receive the plans returned by it to the writ petitioner and grant necessary approvals in accordance with law, within a period of four weeks from the date of the resubmission of the plans by the writ petitioner. No costs.

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(BILAL NAZKI, J)

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(S.ANANDA REDDY, J)

Date:21-12-2004.

Msr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, the Twenty First Day of December, Two thousand and four.

To

1 The Commissioner, Municipal Corporation of Hyderabad,

Tankbund Road, Hyderabad.

2 R.Vasudev Pillai, s/o Late R.Venu Gopal Pillai
Senior Advocate, R/o Road No 6, Banjara Hills,

Hyderabad.

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